

JOHN P. ERREBO, JR.

IBLA 77-457

Decided September 15, 1977

Appeal from decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting noncompetitive oil and gas lease offer N-14776.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Filing--Oil and Gas Leases: First Qualified Applicant

Where an applicant fails to file five copies of a noncompetitive lease offer as required by the regulations in 43 CFR 3111.1-1(a) the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, is fatal to the oil and gas offer.

APPEARANCES: John P. Errebo, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

John P. Errebo, Jr., has appealed from a decision of the Nevada State Office, BLM, dated July 1, 1977, which rejected his noncompetitive oil and gas lease offer N-14776 for the reason that he had failed to comply with the requirements of 43 CFR 3111.1-1(a) by filing only four copies of the lease offer.

[1] The governing regulation in 43 CFR 3111.1-1(a) provides in pertinent part:

(a) Application--(1) Forms. Except as provided in subpart 3112, to obtain a noncompetitive lease an offer to accept such lease must be made on a form approved by the Director, * * *. Each offer must be filled in by

typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney-in-fact or agent. Five copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper office (see § 3000.5 of this chapter). [Emphasis added.]

Persons filing noncompetitive offers to lease are also made aware of these filing requirements on the back of the lease form (Number 3120-3 Eleventh Edition (September 1969)) in the section titled "Instructions." Under the general instructions it is clearly emphasized in section 4 that "This offer must be prepared in quintuplicate and filed in the proper office." (Emphasis added.)

It should be noted that the regulations in 43 CFR 3111.1-1(e) specifically set out all the curable defects for the filing of noncompetitive offers. ^{1/} The failure to file the required number of copies is not included. We have specifically ruled that all failures to comply with this regulation, save those listed in 43 CFR 3111.1-1(e) are fatal to an oil and gas offer. Duncan Miller, 10 IBLA 208, 211 (1973). Thus, in this circumstance, as the State Office has correctly indicated, there is no margin for error. Where the applicant fails to file the required number of copies he is not a qualified applicant and the offer must be rejected.

Appellant does not take issue in his appeal with the application of the regulatory requirements involved. Instead, he essentially contends that the BLM may have misplaced one of his application copies. He asserts that during the same period he made numerous applications for Nevada leases, all of which included the correct number of copies. He states:

^{1/} This section of the regulation provides:

"(e) Curable defects. An offer to lease containing any of the following deficiencies will be approved by the signing officer provided all other requirements are met:

"(1) An offer deficient in the first year's rental by not more than 10 percent. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

"(2) An offer covering not more than 10 percent over the maximum allowable acreage of 2,560 acres. The lease will be approved for 2,560 acres in the discretion of the signing officer or so much over that amount as may be included under the rule of approximation.

"(3) An offer completed in pencil or script.

"(4) An offer on a lease form not currently in use.

"(5) An offer on a form not correctly reproduced provided it contains the statement that the offeror agrees to be bound by the terms and conditions of the lease form in effect at the date of filing."

Upon receiving this rejection notice, my representative contacted Mr. Ken Stowers of the Nevada BLM Office who said that the application "was not realized short til processed" and that the copy "could have been lost on this end", meaning the BLM office. Mr. Stowers also stated that, if the application was short one copy when it arrived at the BLM Office, it should have been caught October 28th. If it was short, Receiving did not catch it so it went to Adjudication where leases are taken in numerical order. Lease application N-14776 was not gotten to until the later part of June.

There is no support in the record for appellant's claim that he did, in fact, initially file the required number of copies of the lease offer in the instant case. Appellant does not assert without qualification that he filed the required five copies. He only says that the error may have been BLM's and that he has repeatedly filed the correct number of copies on other occasions. The latter does not prove the fact of a proper filing in this case. It is not unreasonable for such an act of omission to occur at any time. In this situation, we must accept the facts of record at face value, i.e., that the required number of copies were not properly filed in the State Office.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

